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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/326,646	06/07/1999	SHERVIN PISHEVAR	55741.000003	4448

7590 07/17/2003

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EXAMINER

KYLE, CHARLES R

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 07/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/326,646

Applicant(s)

PISHEVAR ET AL.

Examiner

Charles R Kyle

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-- The MAILING DATE f this c mmunication appears on the c ver sheet with the correspondence address --

Period for R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11,13-17,19 and 36-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-11,13-17,19 and 36-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2-11, 13-17, 19 and 36-45 are drawn to system and method for a buyer driven procurement management
- II. Claims 32-34 are drawn to a system for a seller driven procurement management.

Newly submitted claims 32-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. These combinations are independent if it can be shown that (1) they are not disclosed as capable of use together, (2) they have different modes of operation, (3) they have different functions, or (4) they have different effects. (MPEP 806.04, MPEP 808.01). In the instant case, invention II has separate utility such as controlling production and inventory of food ingredients, and executing restaurant maintenance. See MPEP § 806.05(d). Also, the Examiner respectfully refers Applicant to (groups IV, and V of paragraph 2) of the office action dated March 29, 1999, paper number 7.

Since Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

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prosecution on the merits. Accordingly, claims 32-35 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. In response to this office action, Applicant is respectfully advised to cancel the non-elected claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-11, 13-17, 19 and 36-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to Claims 2-11, 13-17, 19 and 36-45, they all recite that a purchase request is received from a plurality of purchasers. It is unclear whether one aggregate purchase request is received from all purchasers or each purchaser sends an individual request.

As to Claims 14 and 15 they depend from claim 12, which is cancelled.

Examination of the above has been done to the best of the Examiner's ability given the confusion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-5, 10-11, 19, 36-37 and 42-45 are rejected under 35 U.S.C. 102(e) as being anticipated by *Walker et al.*

Concerning Claim 2, *Walker* discloses the invention substantially as claimed, including in a collective procurement management system (Abstract):

A processor (Fig 2, ele. 205);

A memory in communication with the processor (Fig 2, ele. 210), the memory storing a plurality of processing instructions that enable the processor to:

Receive a purchase request form a plurality of purchasers, each purchase request including a purchase price for an item (Summary of the Invention, particularly, Col. 3, lines 2-7);

Group said plurality of purchase requests, based on the item, into a collective procurement order (Col. 3, lines 8-24; Fig. 7);

Fulfill said collective procurement order with respect to each of said plurality of purchasers, based on each requested purchase price (Abstract, lines 14-16).

As to Claim 3, *Walker* discloses an inventory database at Fig 6 and Col. 11, lines 10-21.

With respect to Claims 4 and 5, *Walker* discloses grouping by similar and same products at Fig. 7, eles. 705, 710 and 715.

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Concerning Claim 10, *Walker* discloses the invention as claimed, including in a method for fulfilling a collective procurement order between at least one supplier and a plurality of purchasers, the method comprising;

Receiving a purchase request from a plurality of purchasers, each purchase request including a purchase price for an item (Summary of the Invention, particularly, Col. 3, lines 2-7);

Receiving a supply commitment from at least one identified supplier for the identified item (Fig.11, Col. 12, lines 24-36; Summary of the Invention);

Selectively grouping said plurality of purchase requests, based on said identified item, to create a collective procurement order (Col. 3, lines 8-24; Fig. 7);

Fulfilling said collective procurement order between said at least one supplier and said plurality of purchasers, based on each purchase price received from each of the plurality of purchasers ((Abstract, lines 14-16).

With respect to Claim 11, *Walker* discloses plural suppliers fulfilling an order at Abstract.

With respect to Claim 19, *Walker* discloses additional purchase conditions at Fig. 10 ele. 1060.

With respect to Claim 36, see the discussions of claims 2 and 10 above.

As to Claim 37, see the discussions of claim 36 and *Walker* discloses additional purchase conditions at Fig. 10 ele. 1060.

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As to Claims 42 and 44, see their respective independent claims and *Walker* discloses at least two purchasers providing different purchase prices at Fig. 7, ele. 790.

As to Claims 43 and 45, see their respective independent claims and *Walker* discloses consideration of a supply price at Col. 6, line 64 to Col. , line 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9, 13-17 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Walker* in view of *Pallakoff*.

Concerning Claims 6-8, *Walker* discloses the invention substantially as claimed. See the discussion of claim 2 above. *Walker* does not specifically disclose that an order is fulfilled based on meeting of a threshold condition of minimum number of purchasers or minimum product quantity. *Pallakoff* discloses these features at Col. 11, lines 25-27. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of *Walker* with the thresholds of *Pallakoff* because this would have allowed the seller to specify conditions of sale which were most convenient and profitable for the sale. Additionally, see Col. 10, line 57 to Col. 11, line 42. Additionally, both *Walker* and *Pallakoff* are directed to buyer-driven procurement

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management systems and would be expected to have features compatible and useful to one another.

Regarding Claim 9, *Pallakoff* discloses minimum total order price at Col. 9, lines 5-17 and Fig. 8, ele. 32.

As to Claim 13, see the discussion of Claims 10 and 8 above.

With respect to Claim 14, see the discussion of claim 10 and 7 above. It is assumed that claim 10 is intended to be the claim from which claim 14 depends.

With respect to Claim 15, see the discussion of claim 10 and 9 above. It is assumed that claim 10 is intended to be the claim from which claim 14 depends.

As to Claim 16, the Examiner takes official notice that varying quantity/pricing combinations were old and well-known in the art of procurement management. It would have been obvious to one of ordinary skill in the art at the time of the invention to have allowed buyers to provide such relationships to sellers because this would have given a seller a greater chance of meeting a buyer's wishes so as to complete a sale.

With respect to Claim 17, *Pallakoff* discloses multiple fulfillment levels at multiple prices at Col. 3, lines 44-45.

With respect to Claim 38, *Pallakoff* discloses notification of pending purchase groups at Col. 4, lines 12-19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a profile to direct such advertising because "targeted advertising" by profiling was a well-known and effective way to maximize notification effectiveness for products.

With respect to Claim 39, *Pallakoff* discloses aggregate demand presentation at Fig. 2. In the trivial case in which each buyer requests 1 item, the claim limitation is

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met. Additionally, indication of the number of buyers would be obvious to indicate level of market activity. Such reporting was old and well-known at the time of the invention.

Regarding Claim 40, *Pallakoff* discloses indication of remaining time at Col. 4, lines 37-41.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on (703) 308-1065. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

crk

crk

July 14, 2003



**VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**